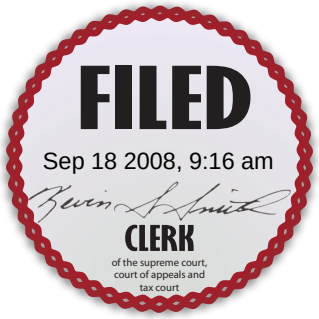

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL BUCKNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0802-CR-83
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No.49G23-0701-FA-12923

September 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, Michael Buckner appeals his sentence for dealing in cocaine, a Class A felony. On appeal, Buckner raises three issues, which we consolidate and restate as whether the trial court properly refused to give Buckner credit for time served on pre-sentence home detention. Concluding that the trial court did not abuse its discretion in refusing to give Buckner credit for such time, we affirm.

Facts and Procedural History

On January 23, 2007, officers with the Indianapolis Metropolitan Police Department executed a search warrant at Buckner's home and recovered two baggies containing 6.76 and .15 grams of cocaine, respectively, a baggie containing .28 grams of marijuana, and a shotgun. On January 24, 2007, the State charged Buckner with dealing in cocaine, a Class A felony; possession of cocaine in an amount greater than three grams, a Class C felony; possession of cocaine and a firearm, a Class C felony; and possession of marijuana, a Class A misdemeanor. On February 8, 2007, the trial court conducted a pre-trial conference and ordered that Buckner be placed on home detention. On October 10, 2007, the parties entered into a plea agreement under which Buckner agreed to plead guilty to dealing in cocaine, and the State agreed to dismiss the three remaining charges. The plea agreement also stated that the executed portion of Buckner's sentence could not exceed four years. On November 27, 2007, the trial court conducted a guilty plea hearing, at which it accepted Buckner's plea, ordered a pre-sentence investigation report, and scheduled a sentencing hearing for January 7, 2008.

At the January 7, 2008, sentencing hearing, the trial court denied Buckner's request to receive credit time for the 333 days he served on pre-sentence home detention and sentenced him to twenty years. The twenty-year sentence consisted of sixteen years suspended, four years executed, a recommendation that the executed term consist of two years of work release and two years of home detention, and one year of probation following the executed term. Buckner now appeals.

Discussion and Decision

Buckner argues the trial court improperly refused to give him credit for time served on pre-sentence home detention.[1] Pre-sentence credit for time served while "confined" is a matter of statutory right, not a matter of judicial discretion. See Ind. Code §§ 35-50-6-3(a) and 4(a); Weaver v. State, 725 N.E.2d 945, 947-48 (Ind. Ct. App. 2000). However, "those sentencing decisions not mandated by statute are within the discretion of the trial court and will be reversed only upon a showing of abuse of that discretion." Molden v. State, 750 N.E.2d 448, 449 (Ind. Ct. App. 2001). Abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and

[1] Buckner also argues that the trial court's denial of credit time was improper because it 1) erroneously believed it lacked discretion to give credit time for pre-sentence home detention; 2) denied credit time based on a blanket policy that failed to address the particular facts and circumstances of Buckner's case; and 3) "has not provided this Court with a meaningful, considered record for review." Appellant's Brief at 8. Regarding the first argument, Buckner overlooks that although the trial court expressed doubt whether it had the authority to give credit time for pre-sentence home detention, it went on to state that to the extent it had such authority, it was not "going to exercise [its] discretion on that." Transcript at 36; see also id. at 40 (trial court stating, in response to Buckner's counsel's request for a ruling on the "home detention credit time issue," that "the Court's ruling was it was requested and denied . . . because the Court chose not to impose it in the Court's discretion"). Regarding the second argument, although we agree with Buckner that a blanket policy of denying credit time would be inconsistent with the trial court's obligation to craft a sentence based on the particular facts and circumstances of the defendant's case, Buckner's only evidence supporting the existence of such a policy is the trial court's statement that it was not "big on" giving pre-sentence credit time for home detention. Tr. at 36. This passing statement is hardly evidence of a blanket policy. Regarding the third argument, we note that the appealing party, not the trial court, is generally responsible for creating a record that allows for meaningful appellate review, see Miller v. State, 753 N.E.2d 1284, 1287 (Ind. 2001), and, at any rate, our discussion below indicates that the record here allows for such a review.

circumstances before it. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007).

Here, Buckner does not argue that his pre-sentence home detention rendered him "confined" within the meaning of Indiana Code section 35-50-6-3 so as to make credit for serving such time a statutory right.[2] Thus, the trial court's refusal to give Buckner credit for pre-sentence home detention was a sentencing decision "not mandated by statute," Molden, 750 N.E.2d at 449, and the question becomes whether the trial court's refusal constitutes an abuse of discretion.

We note initially that the State makes an interesting argument regarding our standard of review, namely, that although prior decisions from this court purport to apply an abuse of discretion standard in reviewing the trial court's refusal to give credit for pre-sentence (or pre-trial) home detention, see James v. State, 872 N.E.2d 669, 671-72 (Ind. Ct. App. 2007); Molden, 750 N.E.2d at 448-51; Capes v. State, 615 N.E.2d 450, 452-55 (Ind. Ct. App. 1993), holding adopted by Purcell v. State, 721 N.E.2d 220, 224 n.6 (Ind. 1999), the language of those opinions "suggest[s] that even if the court had the discretion to grant such credit, it would never be an abuse of that discretion to deny it." Appellee's Brief at 5 (emphasis added). We hesitate to say that a trial court has unlimited discretion to deny credit for pre-sentence home detention because there are at least hypothetical situations where such a decision would clearly be out of bounds (consider, for example, an extreme case where the trial court stated it was denying credit time because it disliked the defendant). Regardless, we are not convinced the trial court's decision here was

[2] This court has expressed doubt whether home detention could rise to the level of confinement, see id. at 451 n.4, but has never held that home detention and confinement are mutually exclusive.

clearly against the logic and effect of the facts and circumstances before it. As the State puts it,

> The sentence the court imposed allowed for [Buckner's] earlier good performance on home detention, allowed for the fact that this was his first felony, and was designed to keep him working and contributing to the support of his family. It was thus carefully framed to suit the particular rehabilitative needs of this defendant. To order the trial court to grant credit for the time served on [pre-sentence] home detention would wipe out a substantial portion of the sentence imposed by the court, and deprive [Buckner] of the correctional and rehabilitative benefits the sentence was crafted to provide.

Id. at 6. Thus, we conclude the trial court did not abuse its discretion when it denied Buckner credit for time served on pre-sentence home detention.

Conclusion

The trial court properly refused to give Buckner credit for time served on pre-sentence home detention.

Affirmed.

NAJAM, J., and MAY, J., concur.